

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-Cr-174

MICHAEL J. HAYS,

Defendant.

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MOTION FOR DOWNWARD DEPARTURE

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The United States of America, by its attorneys, Steven M. Biskupic, United States Attorney for the Eastern District of Wisconsin, and Stephen A. Ingraham, Assistant United States Attorney for said district, HEREBY MOVES the Court to impose a sentence below the defendant's proposed guideline imprisonment range of 37 to 46 months as reflected in the presentence report pursuant to section 5K1.1 of the United States Sentencing Guidelines. In support of this motion, the United States of America submits that the defendant has provided substantial assistance to law enforcement authorities in the investigation and prosecution of other persons who committed offenses.

The proposed downward departure is based in part upon the defendant's substantial assistance rendered against his co-conspirators who were charged due to their involvement in the same criminal activity, including Scott Walls, prosecuted in the Western District of Washington; Shawn Laemmrigh, prosecuted in the Western District

of Michigan; and Justin Emch and Houton Yaghmai, each prosecuted in the Western District of North Carolina.

Hays, Walls and Laemmrach all began to cooperate after their residences were simultaneously searched in April 2004. Hays assisted the FBI in both Milwaukee and in the Western District of North Carolina, where the undercover investigation of him was conducted, and where he was initially charged.

For the investigation in the Western District of North Carolina, beginning in 2004 and continuing to the present, Mr. Hays:

- 1) testified, along with Walls and Laemmrach, in the grand jury in North Carolina in March of 2006, leading to the indictments of two other intellectual property pirates (Emch and Yaghmai, as noted above) who were members of the MAGE group;

- 2) obtained significant evidence against the persons who were later indicted by generating encrypted chat with them, and decrypting it; and

- 3) located one of the two indicted men, Houton Yaghmai, and furnished other information leading to the execution of a search warrant of Yaghmai's residence in California in June 2005.

In addition, for the FBI in Milwaukee, Mr Hays assisted from early June, 2004 until the present time by these acts :

- 1) met with agents approximately 20 times, reporting detailed information about intellectual property piracy, and answered questions posed to him by agents during telephone calls;

2) identified other persons involved in similar intellectual property pirating activity – both his own “MAGE” group and three other ones - TDA, JGT and Trueworks, as well as these groups’ names and internet locations;

3) provided internet relay chat information for these groups so that their communications could be tracked, as well as logs detailing conversations about intellectual property piracy methods;

4) provided lists of copyrighted material released into the piracy community by the four pirating groups;

5) helped investigate an intellectual property pirate by engaging him in internet chat and file sharing, assisting the FBI to buy several evidentiary copies of pirated software; shutting down this person’s operation prevented further pirating of certain high-end software;

6) helped locate subjects of intellectual property piracy online, including a subject selling pirated key generation software and another subject distributing pirated industrial automation software;

7) provided information about spam, South African internet fraud schemes, and a child pornography web site; and

8) as recently as December 29, 2006, reported on a web site selling pirated intellectual property, including hundreds of software titles and thousands of DVD’s, providing screen prints capturing the contents of the website, and tracing the website to

a computer server in Kentucky. Based on this information, the web hosting company shut down the web site in mid-January 2007, which was funded by a person overseas.

For this assistance, the government will recommend at sentencing that the Court grant a five-level downward departure to defendant Hays, and impose a sentence of 24 months imprisonment.

If the Court were to accept this recommendation, the defendant's total offense level would be reduced from 21 to 16. Combined with a criminal history category of I, the defendant's new guideline imprisonment range would be 21 to 27 months.

The government agrees with the factual detail concerning Mr. Hays' cooperation presented in his sentencing memorandum and attachments of January 18, 2007.

Respectfully submitted this 19th day of January, 2007 at Milwaukee, Wisconsin.

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